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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation Against: **Bradley Howard Chesler, M.D.** **1955 Citracado Pkwy Unit 203** **Escondido, CA 92029-4110** **Physician's and Surgeon's Certificate No. A 43963,** Respondent.	Case No. 800-2014-008851 OAH No. 2018010827 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about August 31, 1987, the Medical Board issued Physician's and Surgeon's Certificate No. A 43963 to Bradley Howard Chesler, M.D. (Respondent). Physician's and Surgeon's Certificate No. A 43963 was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2019, unless renewed.

JURISDICTION

3. This Second Amended Accusation, which supersedes the First Amended Accusation filed on March 21, 2018, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of

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care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"..."

6. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

7. Section 725 of the Code states, in pertinent part:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon...

"...

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

8. Section 2242 of the Code states, in pertinent part:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"..."

9. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

10. Section 4022 of the Code states in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"...

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

"..."

11. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

12. Unprofessional conduct under section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent has subjected his Physician's and Surgeon's Certificate No. A 43963 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he was grossly negligent in his care and treatment of Patients A, B, C, D, and E[1] as more particularly alleged hereinafter:

14. The following drugs, alleged to have been prescribed below, are dangerous drugs and substances listed in the Controlled Substances Act:

(a) Oxycodone is a Schedule II controlled substance.

[1] To protect the privacy of all patients involved, patient names have not been included in this pleading. Respondent is aware of the identity of the patients referred to herein.

(b) Short Acting Oxycodone is a Schedule II controlled substance.

(c) Percocet (Oxycodone) is a Schedule II controlled substance.

(d) Lortab (Hydrocodone) is a Schedule II controlled substance.

(e) Valium (Diazepam) is a Schedule IV controlled substance.

(f) OxyContin is a Schedule II controlled substance.

(g) Norco (Hydrocodone) is a Schedule II controlled substance.

(h) Vicodin (Hydrocodone) is a Schedule II controlled substance

(i) Fentanyl is a Schedule II controlled substance.

(j) MS Contin is a Schedule II controlled substance.

(k) Soma (Carisoprodol) is a Schedule IV controlled substance as of January 11, 2012.

(l) Hydromorphone is a Schedule II controlled substance.

(m) Dilaudid (Hydromorphone) is a Schedule II controlled substance.

(n) Lorazepam (Ativan) is a Schedule IV controlled substance.

(o) Alprazolam (Xanax) is a Schedule IV controlled substance.

(p) Methadone is a Schedule II controlled substance.

Patient A:

15. On or about February 7, 2005,[2] Patient A, a female patient, presented to Respondent with chronic neck pain following a motor vehicle accident, with a C5-C6 anterior cervical discectomy and a fusion. In or about 2005, Patient A underwent a right upper extremity surgery to remove a tumor, and in or about 2007, she underwent surgery to remove hardware in her right arm due to ongoing pain.

16. Under Respondent's care, Patient A's pain was treated with multiple types of controlled substances, including OxyContin, Norco 10/325, Vicodin 5/500, Valium, Dilaudid, Fentanyl patch, and Percocet.

17. On or about June 26, 2008, July 18, 2011, and September 16, 2014, Patient A signed patient agreement forms (Pain Agreements) for Respondent. The terms of the July 18, 2011, Pain

[2] Conduct occurring more than seven (7) years from the filing date of this Accusation is for informational purposes only and is not alleged as a basis for disciplinary action.

Agreement provided, in part, that Patient A would present to only one Emergency Room visit per month for pain exacerbations, and would obtain medications only from the agreed-upon pharmacy.

18. In and about the years 2011 to 2013, Respondent prescribed opioid medications to Patient A, including morphine equivalent doses[3] (MED) that exceeded 300 MEDs. During that time Patient A's actions included the following:

(a) Patient A reported a lack of adequate analgesia, continued chronic pain, and decreased function;

(b) Patient A presented to multiple emergency departments for pain relief;

(c) Patient A made requests for early refills of medications, and reported medications lost or stolen; and

(d) Patient A obtained medication refills from ten prescribers at seven pharmacies.

19. In or about the time periods from 2010 to 2014, Patient A provided urine drug test results that were inconsistent with the medications Respondent prescribed to her. Throughout that time frame, on approximately 14 occasions, Patient A's urine test results were inconsistent with the medications prescribed, including on or about November 11, 2014, when Patient A's urine drug test detected no controlled substances in her system. Throughout that time frame, Respondent failed to document and/or adequately document any detailed discussion with Patient A regarding these inconsistencies, and continued to prescribe controlled substances to her.

20. From in or about December 2011, to in or about November 2012, Respondent wrote approximately fifty-six prescriptions for medications containing acetaminophen for Patient A, prescribing approximately:

- Fifteen prescriptions of 120 tablets of Percocet;
- Fourteen prescriptions of 180 tablets of Lortab;
- Fourteen prescriptions of 90 tablets of Dilaudid; and
- Thirteen prescriptions of Valium.

[3] Morphine equivalent doses (MED) are used to equate different opioids into one standard value, based on morphine and its potency, referred to as MED. MED calculations permit all opioids to be converted to an equivalent of one medication, for ease of comparison and risk evaluations.

21. In or about the time period from 2011 to 2013, Respondent prescribed to Patient A, a daily combination of medications that contained acetaminophen: six (6) Lortab 7.5/500 tablets and four (4) Percocet 10/325 tablets, thereby prescribing an approximate average of 4300 milligrams (mg.) of acetaminophen per day.

22. In the twelve-month timeframe from in or about December 2011 to November 2012, Respondent prescribed to Patient A, an average of 5000 mg. of acetaminophen per day.

Patient B:

23. On or about February 27, 2013, Patient B, a female patient, first presented to Respondent for chronic abdominal and pelvic pain, and generalized pain. Patient B had a history of six cesarean section deliveries, and abdominal reconstruction with mesh. On that date, Respondent performed an initial history and physical examination of Patient B, however, the history lacked an appraisal of prior non-opioid treatments for chronic pain, and an assessment of psychological and/or addiction risk. No baseline urine drug screen was performed. A 12 month Controlled Substance Utilization Review and Evaluation System (CURES) report was reviewed. When Patient B first presented, she was taking MS Contin 30 mg., three times per day (*tid*). Respondent added Norco 10/325 and Oxycodone 10 mg. to her chronic pain medication regime.

24. On or about February 27, 2013, and thereafter, Respondent failed to document a discussion of the risks and benefits of the use of controlled substances with Patient B, and did not enter into a written Pain Agreement with Patient B at any time.

25. During an approximate ten-month period that Respondent provided care and treatment to Patient B, he wrote the following prescriptions for more than a 30-day supply, including extra prescriptions and refills:

- (2013) twelve prescriptions of MS Contin 30 mg. #90;
- (2013) fifteen prescriptions of Norco 10/325 (10 for #240; 4 for #180 and 1 for #30);
- (2014) thirteen prescriptions of MS Contin 30 mg. #90;
- (2014) twenty prescriptions of Norco 10/325 (15 for #240; 3 for #180; and 1 for #96); and
- (2014) thirteen prescriptions of Oxycodone 10 mg. (10 for #90; 3 for #120).

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26. In or about the time period from December 2013, through on or about September 2014, Respondent wrote seventeen prescriptions for medications containing acetaminophen for Patient B prescribing approximately:

- Sixteen prescriptions of Norco 10/325 #240; and
- One prescription of Norco 10/325 #180[4].

27. While caring for Patient B, Respondent saw her on an approximate monthly basis, mainly consisting of medication management. Treatment goals documented by Respondent were generic, rather than specific, clear functional patient goals. From on or about February 27, 2013, until on or about February 23, 2015, no urine drug screen was performed.

28. While under Respondent's care, Patient B displayed aberrant behaviors, including multiple requests for early refills, filling similar prescriptions at different pharmacies at less than 30-day intervals, during which time Respondent continued to prescribe for Patient B, with no documentation that she was asked to bring in medication for pill counting when there were inconsistencies in her refill pattern:

- On or about April 1, 2014, Patient B refilled her prescription for #240 Norco 10/325;
- On or about April 15, 2014, Patient B refilled her prescription for #240 Norco 10/325;
- On or about May 1, 2014, Patient B refilled her prescription for #240 Norco 10/325;
- On or about May 14, 2014, Patient B refilled her prescription for #240 Norco 10/325;
- On or about May 29, 2014, Patient B refilled her prescription for #240 Norco 10/325;
- On or about June 11, 2014, Patient B refilled her prescription for #240 Norco 10/325; and,
- On or about June 26, 2014, Patient B refilled her prescription for #240 Norco 10/325.

Patient C:

29. On or about August 8, 2008, Patient C, a male patient, first presented to Respondent for chronic left shoulder and arm pain. Patient C had a history of two shoulder surgeries in 2003 and 2006, reporting increasing pain around 2007. Respondent performed an ultrasound showing supraspinatus impingement and subscapularis shortening. Patient C's pain was managed with

[4] In or about September of 2014, Patient B reported to Respondent that her liver enzymes were elevated, after which Respondent reduced her Norco refill amount to 180 tablets.

multiple controlled substances including Soma, Norco, OxyContin, and short acting Oxycodone, MS Contin and Hydromorphone. On that date, Respondent performed an initial history and physical examination of Patient C, however, that history lacked an appraisal of prior non-opioid treatments for chronic pain, an assessment of psychological and/or addiction risk. No baseline urine drug screen was ordered.

30. On or about August 8, 2008, Patient C signed a Pain Agreement, and Respondent discussed the risks and benefits of the use of opioid medications. Patient C signed no additional agreements, and Respondent had no additional discussions and/or documented no additional discussions of opioid medications' risks and benefits, although during that time, Patient C violated the Pain Agreement multiple times with frequent requests for early refills, or by reporting the medications were lost or stolen.

31. During an approximate ten-month period that Respondent provided care and treatment to Patient C, he wrote the following prescriptions for more than a 30-day supply, including extra prescriptions and refills:

- (2012) 14 prescriptions of OxyContin 80 mg. #90;
- (2012) 14 prescriptions of Oxycodone 30 mg. #360;
- (2012) 14 prescriptions of Hydromorphone 8 mg. (8 of #120, 6 of #90); and
- (2013) 20 prescriptions of short acting Oxycodone (15 mg. or 30 mg. tablets);

32. In or about March, April, May, June, September, and October of 2013, Patient C filled two prescriptions of short acting Oxycodone in the same month.

33. While caring for Patient C, after November 2009, urine drug tests were performed multiple times per year, however, in nine instances between in or about March 2010 to in or about June 2013, Patient C's urine test results were inconsistent with his prescribed medication, specifically, Hydromorphone was not detected in the urine. However, Respondent continued to prescribe Dilaudid to Patient C. Respondent did not engage in and/or document any discussion of inconsistent urine test results with Patient C on subsequent office visits, and continued to prescribe controlled substances to Patient C.

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Patient D:

34. On or about June 21, 2010, Patient D, a then 45-year old female patient, first presented to Respondent for chronic pain and headaches. Patient D reported taking medication for pain beginning in 1994, which included but was not limited to Fentanyl, Soma, Vicodin, and cortisone shots, but no baseline urine drug screen was ordered at this visit. Patient D had a history of an MRI of the cervical area in 2009, and prior treatment with acupressure and chiropractic. Respondent did not order any imaging studies, and did not request the patient's prior MRI report from 2009 at that or any visit thereafter. On that date, Respondent performed an initial history and physical examination of Patient D that did not include vital signs, a reported pain score, an appraisal of prior non-opioid treatments for chronic pain, or an assessment of psychological and/or addiction risk. The patient's chart for this visit included a musculoskeletal exam that noted:

> "Head/Neck (posterior), shoulder girdle: No erythema, ecchymosis or edema. Generalized moderate tenderness over the neck and shoulder girdle, moderate tenderness over the right occipital grove, moderate tenderness over the right scapular area. Head held in forward position. Full, painless range of motion of the neck. Normal stability. Normal strength and tone."

35. On or about June 21, 2010, Patient D signed a Pain Agreement. The terms of this Pain Agreement, in part, specifically prohibited early refills, doctor shopping, the use of more than one pharmacy, indicated that the patient may be subjected to random pill counts and random urine drug screening, and that evidence of misuse may be grounds for termination. Patient D signed no additional Pain Agreements throughout her care and treatment with Respondent, and Respondent had no additional documented discussions with the patient regarding opioid medications' risks, benefits, and alternatives.

36. Between on or about June 21, 2010, through on or about October 25, 2011, Respondent provided care and treatment to Patient D that included writing the following prescriptions for a 30-day supply, including refills:

- Ten prescriptions of Alprazolam 1 mg. #60;
- Six prescriptions of Lorazepam 1 mg. (1 of #30, 1 of #40, and 4 of #90);

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- Ten prescriptions of Oxycodone 30 mg. (1 of #30, 1 of #40, 1 of #120, 2 of #180, 1 of #200, 4 of #240) and one prescription of Oxycodone 15 mg. #180;
- One prescription of Oxycontin 40 mg. #60;
- Two prescriptions of Fentanyl 25 mcg. (1 of #10 and 1 of #15), two prescriptions of Fentanyl 50 mcg. #15, and one prescription of Fentantyl 75 mcg. #15;
- Nineteen prescriptions of Norco 10/325 mg. (1 for #50, 1 for #60, 1 for #80, 2 for #100, 1 for #140, 4 for #180, and 9 for #240).

37. Between on or about June 21, 2010, through on or about April 21, 2011, Patient D saw Respondent on approximately 13 clinical visits. Throughout that time, including at clinical visits on or about March 22, 2011, and on or about April 21, 2011, treatment goals documented by Respondent were generic, rather than specific, clear functional patient goals, and the musculoskeletal examination notes for each visit were identical.

38. While under Respondent's care, including at clinical visits on or about March 22, 2011, and on or about April 21, 2011, no urine drug screen was performed on Patient D, no pill count was ever conducted or documented, and Respondent never referred the patient for imaging studies, behavioral management, psychiatry, or addiction treatment.

39. While under Respondent's care, Patient D displayed aberrant behaviors, including but not limited to, admitting to overusing her medication, repeatedly requesting early refills, and filling prescriptions at different pharmacies. Despite her repeated noncompliance with the Pain Agreement, Respondent continued to prescribe controlled substances for Patient D with little documented discussion regarding her repeated instances of noncompliance, and no change in plan to address her noncompliance.

40. Between on or about April 22, 2011, through on or about October 25, 2011, Patient D did not present to Respondent for treatment due to an apparent change in her insurance coverage. During that time, Patient D contacted Respondent's office on multiple occasions to report that she was in withdrawal and needed medications.

41. On or about October 25, 2011, Respondent authorized an early refill of Norco for Patient D. On that same date, Respondent formally discharged the patient from his care.

Patient E:

42. On or about February 12, 2009, Patient E, a then 59-year old established male patient and recovering alcoholic, presented to Respondent for recurring treatment for chronic neck pain following a work-injury and two surgeries. On that date, Respondent completed a physical exam of the patient, which was documented as:

> CONSTITUTIONAL: General Appearance: White male, well nourished body habitus, appears stated age, appropriately groomed.
>
> MUSCULOSKELETAL & SKIN EXAMS: Head/Neck (Posterior), Shoulder Girdle: There are scars consistent with previous surgeries listed in HPI/PMH. Moderate tenderness in the midline. Head and neck in neutral position. Unable to test range of motion with cervical spine fusion, in severe pain. Normal stability. Normal strength and tone. Spine/Ribs/Pelvis: No erythema, ecchymosis, or edema. No tenderness of spine, ribs or SI joints. No kyphosis, lordosis, or scoliosis. Full, painless range of motion of the thoracic and lumbar spine. Normal stability. Normal strength and tone.
>
> GAIT/STATIONS: Gait intact. Station, posture normal. Romberg negative. Does not use mobility aids.

Respondent's stated diagnosis for the patient was "723.3 – PAIN CERVICAL WITH RADIATION, 723.4 – RADICULOPATHY CERVICAL, 782.0 – NUMBNESS PARESTHESIA OF SKIN." The stated treatment plan goals for the patient were, "Increase the patient's ability to self-manage pain and related problems. Maximize and maintain optimal activity and function. Reduce subjective pain intensity." At the conclusion of the visit, Respondent refilled the patient's medications, including Methadose (Methadone) 10 mg #600, Xanax 1 mg #120 (with 3 refills), Hydrocodone-acetaminophen (Norco) 10-325 mg #240 (with 3 refills), Gabapentin[5] 600 mg #120 (with three refills), and Wellbutrin[6] 100 mg #120 (with 3 refills).

43. Between on or about February 12, 2009, through on or about January 31, 2012, Respondent provided care and treatment to Patient E that included writing the following prescriptions for a 30-day supply, including refills:

- Thirty-four prescriptions of Norco 10-325 mg. (12 of #240, 22 of #120);

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[5] Gabapentin is a nerve pain medication and anticonvulsant. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[6] Wellbutrin, name brand for Bupropion, is a smoking cessation aid and antidepressant. It is a dangerous drug pursuant to Business and Professions Code section 4022.

- Thirty-seven prescriptions of Xanax 1 mg. (12 of #120, 21 of #90, 4 of #45);
- Twenty-seven prescriptions of Percocet 10-325 mg. #90;
- Thirty-five prescriptions of Methadone 10 mg. (5 of #600, of 30 of #180);
- Twenty-four prescriptions of Buspirone[7] 15 mg. #90;
- Thirty-two prescriptions of Lexapro 20 mg. #30;
- Twenty-eight prescriptions of Wellbutrin #100 mg; and
- Forty-four prescriptions of Gabapentin 600 mg (40 for #120, 4 for #45).

44. Between on or about February 12, 2009, through on or about January 31, 2012, Patient E saw Respondent on monthly basis on approximately 38 clinical visits, mainly consisting of medication management. Throughout that time, the patient's physical examination findings were relatively identical and never included any vital signs, heart rate, temperature and respirations, or pain scale. Throughout that time, Respondent's stated diagnosis and treatment goals for each visit were identical.

45. Between on or about February 12, 2009, through on or about January 31, 2012, Respondent did not enter into a written Pain Agreement with Patient E, or renew an established Pain Agreement with Patient E during that time period.

46. On or about April 6, 2009, Patient E was seen by Respondent. During that visit, the patient asked Respondent for a substitute for Wellbutrin and Buspirone, but was directed by Respondent to see a psychiatrist for any change in his psychiatric medications.

47. On or about October 18, 2009, Patient E was found unresponsive by his wife and was subsequently hospitalized for aspiration pneumonia with MSSA, confusion, COPD, and hyperlipidemia.

48. On or about November 12, 2009, after having been discharged from the hospital, Patient E returned to see Respondent. During this visit, Respondent counseled the patient about using his medications properly, but refilled his medications. Respondent ordered a urinalysis be taken from the patient to "assure compliance and to prevent diversion." Respondent did not

[7] Buspirone is an anxiolytic medication used to treat anxiety. It is a dangerous drug pursuant to Business and Professions Code section 4022.

request testing for alcohol, and the test results were inconsistent with the medications prescribed. This single urine test is the only test ordered by Respondent for Patient E between in or about February 12, 2009, through on or about January 31, 2012.

49. On or about December 7, 2010, Patient E was taken to the hospital after he was hallucinating and wielding a gun. At the hospital, Patient E displayed symptoms of alcohol withdrawal. Patient E admitted he had relapsed after 13 years of sobriety 6 months earlier, and had been drinking large amounts of vodka and abusing his pain medications.

50. On or about December 14, 2010, after having been discharged from the hospital, Patient E returned to see Respondent. During this visit, Respondent counseled the patient about using his medications properly and abstaining from alcohol, but made no changes in his treatment plan, and refilled all of his medications.

51. On or about December 17, 2010, Respondent received a "Member Health Note" from Patient E's insurance company stating that medical research indicates that chronic use of Alprazolam (Xanax) may lead to tolerance and dependency, that chronic use of opioid analgesics may lead to tolerance and dependency, and that the use of Gabapentin increases the risk of suicidal thoughts and behaviors.

52. Between on or about February 12, 2009, through on or about January 31, 2012, despite two hospitalizations, Respondent never referred the patient for imaging studies, EKG, behavioral management, psychiatry, or addiction treatment, but continued to prescribe high doses of various medications. Throughout that time, the patient's chart makes no mention of a specific discussion regarding the risks, benefits, or alternatives of pharmacological treatment, or an assessment of the efficacy of treatment.

53. On or about February 12, 2012, Patient E was found dead at his home as a result of the combined effects of multiple substances including alcohol, Methadone, Oxycodone (Percocet), Hydrocodone (Norco), Alprazolam (Xanax), and Bupropion.

54. Respondent committed the following acts of gross negligence in his care and treatment of Patients A, B, C, D, and E:

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Patient A:

A. In and about 2011 to 2013, Respondent continued to prescribe a high dose regime of controlled substances to Patient A, including doses that exceeded 300 MEDs, while she reported a lack of adequate analgesia and/or continued chronic pain, and/or decreased function, and/or displayed aberrant behaviors;

B. From in or about December 2011, to in or about November 2012, Respondent prescribed medications containing acetaminophen for Patient A, containing approximately 5000 mg. per day of acetaminophen;

C. From in or about December 2011, to in or about early 2013, Respondent prescribed medications containing acetaminophen for Patient A, containing approximately 4300 mg. per day of acetaminophen;

D. In and about 2011, and thereafter, Respondent continued to prescribe medications under Patient A's Pain Agreement, despite Patient A's violations of the Pain Agreement; and

E. Between 2010 and 2014, Patient A's urine tests were inconsistent with medications prescribed on 14 occasions, and/or on November 11, 2014, showed no controlled substances, but Respondent continued to prescribe medications under Patient A's Pain Agreement despite inconsistencies.

Patient B:

F. On or about February 27, 2013, and thereafter, Respondent failed to discuss and/or document a discussion of the risks and benefits of the use of controlled substances with Patient B and/or enter into a Pain Agreement with Patient B during the time that he provided her care and treatment;

G. In or about a ten-month period of time in 2013, Respondent frequently prescribed to Patient B more than 30-day doses of controlled substances;

H. In or about the time period from December 2013, through on or about September 2014, Respondent wrote prescriptions for medications containing acetaminophen for Patient B, with daily average acetaminophen doses of approximately 4.6 grams; and

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I. While under Respondent's care, Patient B displayed aberrant behaviors, including multiple requests for early refills, filling similar prescriptions at different pharmacies at less than 30-day intervals, during which time Respondent continued to prescribe for Patient B, with no discussion and/or no documentation of discussion regarding these behaviors.

Patient C:

J. On or about August 8, 2008, Patient C signed a Pain Agreement, and discussed the risks and benefits of the use of opioid medications. Patient C signed no additional agreements, and had no additional discussions of opioid medications' risks and benefits, although during that time, Patient C violated the Pain Agreement multiple times with frequent requests for early refills, or by reporting the medications were lost or stolen;

K. During the time periods in or about 2012 and 2013, Respondent frequently prescribed to Patient C extra controlled substances prescriptions and/or prescribed two short acting Oxycodone prescriptions the same months in or about March, April, May, June, September and October of 2013; and

L. During an approximate ten-month period that Respondent provided care and treatment to Patient C, he wrote prescriptions for more than a 30-day supply, including extra prescriptions and refills.

Patient D:

M. Between on or about March 22, 2011, through on or about October 25, 2011, Respondent continued to prescribe to Patient D, despite the fact that she had repeatedly displayed aberrant behaviors, possible addiction, and noncompliance with her Pain Agreement.

Patient E:

N. Between on or about February 12, 2009, through on or about January 31, 2012, Respondent continued to prescribe to Patient E, without taking a systematic and thorough history including vitals, without periodically reviewing and documenting efficacy of treatment, without regularly assessing for possible diversion, and without

periodically discussing the risks, benefits, and alternatives of pharmacological treatment.

O. Between on or about February 12, 2009, through on or about January 31, 2012, despite two hospitalizations, Respondent failed to refer Patient E for behavioral management, psychiatry, or addiction treatment, but continued to prescribe to the patient.

P. Between on or about February 12, 2009, through on or about January 31, 2012, Respondent regularly prescribed Methadone to a known alcoholic, in addition to multiple other contraindicated medications known for causing sudden death, and never ordered an EKG or took the patient's vital signs.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

55. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 43963 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patients A, B, C, and D, as more particularly alleged hereinafter:

56. Paragraphs 13 through 54, above, are incorporated by reference and realleged, as if fully set forth herein.

57. Respondent committed the following repeated negligent acts:

(a) Paragraphs 54 A through 54 P, inclusive;

(b) **Patient B:** On or about February 27, 2013, Respondent performed an initial history and physical examination of Patient B, that lacked an appraisal of prior non-opioid treatments for chronic pain, and/or an assessment of psychological and/or addiction risk, and a baseline urine drug screen;

(c) **Patient C:** On or about August 8, 2008, Respondent performed an initial history and physical examination of Patient C, that lacked an appraisal of prior non-opioid treatments for chronic pain, and/or an assessment of psychological and/or addiction risk, and a baseline urine drug screen;

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(d) **Patient D:** Between on or about March 22, 2011, through on or about October 25, 2011, Respondent failed to consider a referral for a psychiatry consultation for addiction, despite the fact that Patient D displayed aberrant behaviors, possible addiction, and noncompliance with her Pain Agreement; and

(e) **Patient D:** Between on or about March 22, 2011, through on or about October 25, 2011, Respondent failed to obtain a urine drug screen on Patient D, and failed to conduct or document a pill count, despite the fact that Patient D displayed aberrant behaviors, possible addiction, and noncompliance with her Pain Agreement.

THIRD CAUSE FOR DISCIPLINE

(Repeated Acts of Excessive Prescribing of Drugs)

58. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 43963 to disciplinary action under Code sections 2227 and 725, as defined by section 725, subdivision (a), of the Code, in that he excessively prescribed drugs to Patients A, B, and C, as more particularly alleged in paragraphs 13 through 54, above, which are incorporated by reference and realleged, as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Prescribing Dangerous Drugs without an Appropriate Prior Examination)

59. Respondent has further subjected his Physician's and Surgeon's Certificate. No. A 43963 to disciplinary action under Code sections 2227 and 2242, as defined by sections 4021 and 4022 of the Health and Safety Code, in that he prescribed dangerous drugs to Patients B and C, without requiring the patients to present for an adequate and/or appropriate prior examinations, as more particularly alleged in paragraphs 13 through 54, above, which are incorporated by reference and realleged, as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate and Adequate Medical Records)

60. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 43963 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain accurate and adequate medical records in his care and

treatment of Patients A, B, C, D, and E, as more particularly alleged in paragraphs 13 through 54 above, which are incorporated by reference and realleged, as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Violation of any Federal Statute or Federal Regulation or any State Statute or Regulation Regulating Dangerous Drugs or Controlled Substances)

61. Respondent has subjected his Physician's and Surgeon's Certificate No. A 43963 to disciplinary action under sections 2227 and 2238, as defined by sections 4021 and 4022 of the Health and Safety Code, in that he has violated Federal statute(s) or regulation(s) or State statute(s) or regulation(s) regulating dangerous drugs or controlled substances, as more particularly alleged in paragraphs 13 through 54 above, which are incorporated by reference and realleged, as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

62. Respondent has subjected his Physician's and Surgeon's Certificate No. A 43963 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 13 through 54 above, which are incorporated by reference and realleged, as if fully set forth herein.

EIGHTH CAUSE FOR DISCIPLINE

(Violating or Attempting to Violate, Directly or Indirectly, Assisting in or Abetting the Violation of, or Conspiring to Violate any Provision of this Chapter)

63. Respondent has subjected his Physician's and Surgeon's Certificate No. A 43963 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that he has engaged in conduct which violates or attempts to violate, directly or indirectly, assists in or abets the violation of, or conspires to violate any provision of this chapter, as more particularly alleged in paragraphs 13 through 54 above, which are incorporated by reference and realleged, as if fully set forth herein.

NINTH CAUSE FOR DISCIPLINE

(Incompetence)

64. Respondent has subjected his Physician's and Surgeon's Certificate No. A 43963 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), of the Code, in that he has demonstrated incompetence in his care and treatment of Patient E, by prescribing Methadone to a known alcoholic, in addition to multiple other contraindicated medications known for causing sudden death, without ever ordering an EKG or taking the patient's vital signs, as more particularly alleged in paragraphs 13 through 54 above, which are incorporated by reference and realleged, as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 43963, issued to Respondent Bradley Howard Chesler. M.D.;

2. Revoking, suspending or denying approval of Respondent Bradley Howard Chesler M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Bradley Howard Chesler, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: July 18, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant